

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

RENTPATH, LLC,

Plaintiff,

v.

JOHN AND JANE DOES, 1 THROUGH 10,

Defendants.

Case No.

COMPLAINT

Plaintiff RentPath, LLC ("RentPath") brings this action against John and Jane Does 1 through 10 (the "Doe Defendants") arising out of an actual and/or threatened infringement of RentPath's valuable intellectual property rights and breach of its website terms of service. RentPath seeks damages and injunctive relief as a result of these actual and threatened violations of its rights. RentPath alleges as follows:

JURISDICTION AND VENUE

1.

This is a suit for, among other claims, direct, contributory, and vicarious copyright infringement under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 et seq. (the "Copyright Act") and violation of the

Computer Fraud and Abuse Act, 18 U.S.C. § 1030 (“CFAA”). This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). Alternatively, this Court may have jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1332(a)(1), as RentPath and the Doe Defendants (whose identities are currently unknown to RentPath) may be citizens of different states, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

2.

Venue in this District is currently proper pursuant to 28 U.S.C. § 1391(b)(2), as, upon information and belief, a substantial part of the events that give rise to RentPath's claims asserted in this action occurred in this judicial district. As the Doe Defendants' true identities are unknown at this time, venue may also be proper under 28 U.S.C. § 1391 (b)(1) and (3) and 28 U.S.C. § 1400(a).

PARTIES

3.

RentPath is a leading digital marketing solutions company that enables millions of people across the country to find houses and apartments for rent. Through its online and mobile solutions, RentPath simplifies the apartment-search experience by providing prospective renters with the information and tools they

need to find homes that match their lifestyles, while driving quality advertiser leads that result in higher occupancies and return on investment.

4.

The Doe Defendants are one or more currently unidentified individuals or companies that have infringed or threatened to infringe RentPath's copyrighted works, breached its terms of service, and violated the CFAA.

5.

Despite RentPath's best efforts, it has been unable to identify the Doe Defendants by name at this time. Thus, the true names and capacities, whether individual, corporate, associate or otherwise, of Doe Defendants 1-10 are unknown to RentPath, who therefore sues said Doe Defendants by such fictitious names.

6.

RentPath believes that information obtained in discovery will lead to the identification of each Doe Defendant's true name and permit RentPath to amend this Complaint to state the same. Specifically, RentPath intends to subpoena the company on whose website the Doe Defendants posted their notice regarding the infringement of RentPath's intellectual property and breach of its terms of service, to obtain this identifying information.

7.

RentPath further believes that the information obtained in discovery may lead to the identification of additional infringing parties to be added to this Complaint as Defendants, since RentPath's monitoring of the online infringement of its intellectual property is ongoing.

STATEMENT OF FACTS

8.

One of RentPath's major online and mobile products is apartmentguide.com ("Apartmentguide®").

9.

Apartmentguide® is the premier site for multifamily communities, connecting qualified renters with their ideal apartments.

10.

RentPath's Apartmentguide® is easily discernible as a professional, copyrighted work. RentPath compiles and creates Apartmentguide® using numerous researchers, writers, artists, compilers, and editors.

11.

RentPath then publishes Apartmentguide® on its website and continually updates its content to keep its listings up to date.

12.

Apartmentguide® contains wholly original material that is copyrightable subject matter under the laws of the United States.

13.

RentPath is, and at all relevant times has been, the copyright owner of exclusive rights under United States copyright law with respect to Apartmentguide®.

14.

For example, RentPath has the right to sue for past and threatened infringement.

15.

RentPath also possesses the exclusive rights to reproduce the copyrighted work and to distribute the copyrighted work to the public.

16.

The Doe Defendants had notice of RentPath's rights under copyright law. In particular, RentPath's Apartmentguide® website clearly displays a copyright notice: "© RentPath, LLC. All rights reserved. All photos, videos, text and other content are the property of RentPath, LLC."

17.

RentPath's Apartmentguide® website also displays terms of service, including the following terms of which the Doe Defendants have notice:

4. Services and Our License to You.

Consumers searching for a residential rental property ("Renters") may search ApartmentGuide.com for available rental properties at no charge.

Subject to the restrictions in these Terms of Service, Apartment Guide hereby authorizes you to view, copy, download and print a single copy of the information and data ("Content") available on ApartmentGuide.com, provided that: (1) the Content is used solely for personal, noncommercial purposes; (2) the Content is not modified, republished, or redistributed; and (3) all copyright, trademark, service mark and other proprietary notices are reproduced as they appear in any such Content. Without limiting the generality of the foregoing, as a Renter, you are only permitted to use ApartmentGuide.com to search for properties, communicate with advertisers/properties, and utilize other rental-related services offered by us. Except as expressly provided above, nothing contained herein shall be construed as conferring, by implication, estoppel or otherwise, any license or right under any patent, trademark or copyright of Apartment Guide.

5. Competitor Exclusion.

Notwithstanding the grant of access conferred in Paragraph 4, Apartment Guide expressly and without limitation revokes the right of any competitor, including competitors of Apartment Guide, RentPath or its affiliates, to access the Website in any way and for any purpose, including, but not limited to, through employees, officers, directors, third party agents, affiliates, or independent contractors. If you are an Apartment Guide competitor, or a competitor of any RentPath affiliate, you acknowledge that you are accessing the Website without legal authorization, and agree to immediately discontinue such access, and to direct all parties within your control or under your direction,

including, but not limited to, employees, officers, directors, third party agents, affiliates, or independent contractors, to cease accessing the Website on your behalf, or for your benefit....

9. No Unauthorized Duplication.

Except as otherwise stated herein, none of the Content on the Website or our mobile application may be modified, copied, reproduced, distributed, republished, downloaded, displayed, sold, compiled, posted or transmitted in any form or by any means, including but not limited to, electronic, mechanical, photocopying, recording or other means, without the prior written consent of Apartment Guide....

11. Access and Interference.

ApartmentGuide.com may contain robot exclusion headers. Much of the information on ApartmentGuide.com is proprietary or is licensed to Apartment Guide by our users or third parties. You agree that you will not use any robot, spider, scraper or other automated means to access the Website for any purpose without our prior written consent. Additionally, you agree that you will not: (i) take any action that imposes, or may impose in our sole discretion an unreasonable or disproportionately large load on our infrastructure; (ii) copy, use, reproduce, modify, create derivative works from, distribute or display any content provided by ApartmentGuide.com without the prior written consent of Apartment Guide and the appropriate third party, as applicable; (iii) interfere or attempt to interfere with the proper working of ApartmentGuide.com or any activities conducted on ApartmentGuide.com; or (iv) bypass our robot exclusion headers or other measures we may use to prevent or restrict access to ApartmentGuide.com.

12. No Unlawful or Prohibited Use.

As a condition of your use of ApartmentGuide.com, you agree to comply with all applicable laws, statutes, ordinances and regulations regarding your use of our service and any related activities. You warrant that you will not use ApartmentGuide.com in any way prohibited by these terms, conditions and notices. In addition, you will not: ...

- Copy, modify, republish or distribute content from the Website or our mobile applications (except as provided herein) or Apartment Guide's copyrights and trademarks....

18.

Certain web-sites allow companies and people who are looking for assistance to post notices of job offerings, with particulars.

19.

On or about September 17, 2017, one or more Doe Defendants posted the following job request on one of these job-posting sites:

I need to pull all of the apartment address [sic] from Apartmentguide.com. I need you to pull all of the address [sic] for all of the apartments located in the following cities. There is [sic] 29+ pages of addresses for each city.

Washington DC
Alexandria, VA
Arlington, VA

The data you insert in the excel sheet should list the apartment name, address and phone number.

Each city will have it's [sic] own excel sheet (one for Washington DC, one for Alexandria and one for Arlington)

Project Type: One-time project

20.

As discussed above, RentPath's Apartmentguide® displays a copyright notice.

21.

On or about September 17, 2017, RentPath discovered that its copyrighted Apartmentguide®, or a substantial portion thereof, was being copied (or "scraped") and distributed, or threatened to be copied and distributed, by the Doe Defendants.

22.

The Doe Defendants, without authorization, and upon information and belief, have copied and distributed the contents or derivative works of Apartmentguide® owned by and registered to RentPath in violation of 17 U.S.C. §§ 106(1), (2) and (3) and in violation of RentPath's terms of service and the CFAA.

COUNT I

DIRECT COPYRIGHT INFRINGEMENT

23.

RentPath repeats and realleges each of the allegations contained in Paragraphs 1 through 22 as if fully set forth herein.

24.

RentPath is, and at all relevant times, has been, the copyright owner of Apartmentguide® infringed by all Doe Defendants.

25.

Among the exclusive rights granted to RentPath under the Copyright Act are the exclusive rights to reproduce Apartmentguide® and to distribute Apartmentguide® and derivative works thereof to the public.

26.

RentPath alleges that each Doe Defendant, without the permission or consent of the RentPath, has copied (or “scraped”) and used at least substantial portions of Apartmentguide® and distributed those contents of Apartmentguide® to the public, and/or made substantial portions of Apartmentguide® available for distribution to others, and/or made derivative works of Apartmentguide®. In doing so, the Doe Defendants have violated RentPath's exclusive rights. The Doe Defendants' actions constitute infringement of RentPath's copyright and exclusive rights under copyright law.

27.

Each Doe Defendant's acts of infringement have been willful, intentional, and in disregard of and with indifference to the rights of RentPath.

28.

As a result of each Defendant's infringement of RentPath's exclusive rights under copyright, RentPath is entitled to either actual or statutory damages pursuant to 17 U.S.C. § 504 and to its attorney's fees and costs pursuant to 17 U.S.C. § 505.

29.

The conduct of each Defendant is causing and, unless enjoined and restrained by this Court, will continue to cause RentPath great and irreparable injury. Pursuant to 17 U.S.C. §§ 502 and 503, RentPath is entitled to temporary, preliminary and permanent injunctive relief prohibiting each Defendant from further infringing RentPath's copyright and ordering that each Defendant destroy all copies of the copyrighted Apartmentguide® or derivative works thereof made in violation of RentPath's exclusive rights to the copyright.

COUNT II

CONTRIBUTORY COPYRIGHT INFRINGEMENT

30.

RentPath repeats and realleges each of the allegations contained in Paragraphs 1 through 29 as if fully set forth herein.

31.

RentPath is, and at all relevant times, has been, the copyright owner of the Apartmentguide® infringed by all Doe Defendants.

32.

Among the exclusive rights granted to RentPath under the Copyright Act are the exclusive rights to reproduce the Apartmentguide® and to distribute the Apartmentguide® and derivative works thereof to the public.

33.

One or more of the Doe Defendants, without the permission or consent of RentPath, have materially contributed to the infringement of RentPath's copyrighted works, with knowledge of that infringement.

34.

By materially participating in the scheme with other Doe Defendants, each Doe Defendant induced, caused or materially contributed to the infringement of RentPath's copyright and exclusive rights under copyright by other Doe Defendants.

35.

Each Doe Defendant's acts of contributory infringement have been willful, intentional, and in disregard of and with indifference to the rights of RentPath.

36.

As a result of each Doe Defendant's contributory infringement of RentPath's exclusive rights under copyright, RentPath is entitled to either actual or statutory damages pursuant to 17 U.S.C. § 504 and to its attorney's fees and costs pursuant to 17 U.S.C. § 505.

37.

The conduct of each Doe Defendant is causing and, unless enjoined and restrained by this Court, will continue to cause RentPath great and irreparable injury. Pursuant to 17 U.S.C. §§ 502 and 503, RentPath is entitled to temporary, preliminary and permanent injunctive relief prohibiting each Doe Defendant from further contributing to the infringement of RentPath's copyright and ordering that each Doe Defendant destroy all copies of the copyrighted Apartmentguide® or derivative works thereof made in violation of RentPath's exclusive rights to the copyright.

COUNT III

VICARIOUS COPYRIGHT INFRINGEMENT

38.

RentPath repeats and realleges each of the allegations contained in Paragraphs 1 through 37 as if fully set forth herein.

39.

RentPath is, and at all relevant times, has been, the copyright owner of the Apartmentguide® infringed by all Doe Defendants.

40.

Among the exclusive rights granted to RentPath under the Copyright Act are the exclusive rights to reproduce the Apartmentguide® and to distribute the Apartmentguide® and derivative works thereof to the public.

41.

One or more of the Doe Defendants, without the permission or consent of RentPath, have the right and ability to supervise and control the infringement of RentPath's copyrighted works by other Doe Defendants and has gained financially from that infringement.

42.

One or more of the Doe Defendants are therefore vicariously liable for the infringement of RentPath's copyrighted works.

43.

As a result of each Doe Defendant's vicarious infringement of RentPath's exclusive rights under copyright, RentPath is entitled to either actual or statutory

damages pursuant to 17 U.S.C. § 504 and to its attorney's fees and costs pursuant to 17 U.S.C. § 505.

44.

The conduct of each Doe Defendant is causing and, unless enjoined and restrained by this Court, will continue to cause RentPath great and irreparable injury. Pursuant to 17 U.S.C. §§ 502 and 503, RentPath is entitled to temporary, preliminary and permanent injunctive relief prohibiting the Doe Defendants from further vicariously infringing RentPath's copyright and ordering that each Doe Defendant destroy all copies of the copyrighted Apartmentguide® or derivative works thereof made in violation of RentPath's exclusive rights to the copyright.

COUNT IV

BREACH OF TERMS OF SERVICE

45.

RentPath repeats and realleges each of the allegations contained in Paragraphs 1 through 44 as if fully set forth herein.

46.

RentPath's Apartmentguide® website displays terms of service, including terms number 4, 5, 9, 11, and 12, quoted above.

47.

RentPath alleges that each Doe Defendant, without the permission or consent of RentPath, has violated the terms of service by copying and/or participating in a scheme directed at making Apartmentguide® available for distribution to himself or herself, as well as others.

48.

By participating in the scheme with other Doe Defendants, each Doe Defendant induced, caused or materially contributed to the breach of RentPath's terms of service.

49.

Each Doe Defendant's breach has been willful, intentional, and in disregard of and with indifference to the rights of RentPath.

50.

As a result of each Doe Defendant's breach, RentPath is entitled to its actual damages.

51.

The conduct of each Doe Defendant is causing and, unless enjoined and restrained by this Court, will continue to cause RentPath great and irreparable injury. RentPath is therefore entitled to temporary, preliminary and permanent

injunctive relief prohibiting each Doe Defendant from further breaching RentPath's terms of service.

COUNT IV

VIOLATION OF THE CFAA

52.

RentPath repeats and realleges each of the allegations contained in Paragraphs 1 through 51 as if fully set forth herein.

53.

The Doe Defendants' actions in "scraping" information from the Apartmentguide® website in violation of RentPath's terms of service constitutes "unauthorized access" to RentPath's Apartmentguide® website and therefore violates the CFAA.

54.

Each Doe Defendant's breach has been willful, intentional, and in disregard of and with indifference to the rights of RentPath.

55.

As a result of each Doe Defendant's violation of the CFAA, RentPath is entitled to its actual damages.

56.

The conduct of each Doe Defendant is causing and, unless enjoined and restrained by this Court, will continue to cause RentPath great and irreparable injury. RentPath is therefore entitled to temporary, preliminary and permanent injunctive relief prohibiting each Doe Defendant from further violating the CFAA.

COUNT VI

PERMANENT INJUNCTION

57.

RentPath repeats and realleges each of the allegations contained in Paragraphs 1 through 56 as if fully set forth herein.

58.

As outlined above, the conduct of each Doe Defendant is causing and, unless enjoined and restrained by this Court, will continue to cause RentPath great and irreparable injury. RentPath is therefore entitled to permanent injunctive relief prohibiting each Doe Defendant from further violating RentPath's copyrights, breaching RentPath's terms of service, and violating the CFAA.

COUNT VII

ATTORNEYS' FEES AND EXPENSES

59.

RentPath repeats and realleges each of the allegations contained in Paragraphs 1 through 58 as if fully set forth herein.

60.

The Doe Defendants have acted in bad faith, been stubbornly litigious, and caused RentPath unnecessary trouble and expense.

61.

As a result, RentPath is entitled to recover its attorneys' fees and expenses under O.C.G.A. § 13-6-11.

COUNT VIII

JOINT AND SEVERAL LIABILITY

62.

RentPath repeats and realleges each of the allegations contained in Paragraphs 1 through 61 as if fully set forth herein.

63.

Each of the Doe Defendants is jointly and severally liable for the entirety of the damages incurred by RentPath as a result of the causes of action asserted against the Doe Defendants, above.

PRAYER FOR RELIEF

WHEREFORE, RentPath prays for judgment against each Doe Defendant as follows:

(a) For entry of temporary, preliminary and permanent injunctions providing that each Doe Defendant shall be enjoined from directly or indirectly infringing RentPath's rights in the copyrighted Apartmentguide®, including without limitation by reproducing or copying (or "scraping") RentPath's Apartmentguide® or its contents, distributing RentPath's Apartmentguide® or derivative works thereof, or making RentPath's Apartmentguide® available for distribution to the public. The Doe Defendants also shall destroy all copies of RentPath's Apartmentguide® that Defendant have downloaded onto any computer hard drive or server without RentPath's authorization and shall destroy all copies of those downloaded copies of Apartmentguide® transferred onto any physical medium or device in each Doe Defendant's possession, custody, or control;

(b) For entry of temporary, preliminary and permanent injunctions providing that each Doe Defendant shall be enjoined from directly or indirectly violating RentPath's terms of service and violating the CFAA;

(c) Jointly and severally, for actual damages or statutory damages, including damages recoverable pursuant to 17 U.S.C. § 504, at the election of the RentPath;

(d) Jointly and severally, for RentPath's costs;

(e) Jointly and severally, for RentPath's reasonable attorney's fees and expenses under 17 U.S.C. § 505, O.C.G.A. § 13-6-11, and any other applicable laws; and

(f) For such other and further relief as the Court deems proper.

JURY DEMAND

RentPath demands a trial by jury as to all issues so triable.

Respectfully submitted this 29th day of September, 2017.

/s/ Todd E. Jones
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